

STATE OF NEW YORK

STATE TAX COMMISSION

In the Matter of the Petition
of

Acme Brush Corporation

:

:

AFFIDAVIT OF MAILING

for Redetermination of a Deficiency or a Revision :
of a Determination or a Refund of Corporation :
Franchise Tax under Article 9A of the Tax Law for :
the Fiscal Years Ending 4/30/75-4/30/7.

State of New York
County of Albany

Jay Vredenburg, being duly sworn, deposes and says that he is an employee of the Department of Taxation and Finance, over 18 years of age, and that on the 4th day of August, 1982, he served the within notice of Decision by certified mail upon Acme Brush Corporation, the petitioner in the within proceeding, by enclosing a true copy thereof in a securely sealed postpaid wrapper addressed as follows:

Acme Brush Corporation
200 Robbins Lane
Jericho, NY 11753

and by depositing same enclosed in a postpaid properly addressed wrapper in a (post office or official depository) under the exclusive care and custody of the United States Postal Service within the State of New York.

That deponent further says that the said addressee is the petitioner herein and that the address set forth on said wrapper is the last known address of the petitioner.

Sworn to before me this
4th day of August, 1982.

Gennie R. Haglund

J. Vredenburg

STATE OF NEW YORK

STATE TAX COMMISSION

In the Matter of the Petition
of

Acme Brush Corporation

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AFFIDAVIT OF MAILING

for Redetermination of a Deficiency or a Revision :
of a Determination or a Refund of Corporation
Franchise Tax under Article 9A of the Tax Law for :
the Fiscal Years Ending 4/30/75-4/30/7.

State of New York
County of Albany

Jay Vredenburg, being duly sworn, deposes and says that he is an employee of the Department of Taxation and Finance, over 18 years of age, and that on the 4th day of August, 1982, he served the within notice of Decision by certified mail upon Seymour Lowenstein the representative of the petitioner in the within proceeding, by enclosing a true copy thereof in a securely sealed postpaid wrapper addressed as follows:

Seymour Lowenstein
310 Madison Ave.
New York, NY 10017

and by depositing same enclosed in a postpaid properly addressed wrapper in a (post office or official depository) under the exclusive care and custody of the United States Postal Service within the State of New York.

That deponent further says that the said addressee is the representative of the petitioner herein and that the address set forth on said wrapper is the last known address of the representative of the petitioner.

Sworn to before me this
4th day of August, 1982.

Carrie A. Hogeland

J. Vredenburg

STATE OF NEW YORK
STATE TAX COMMISSION
ALBANY, NEW YORK 12227

August 4, 1982

Acme Brush Corporation
200 Robbins Lane
Jericho, NY 11753

Gentlemen:

Please take notice of the Decision of the State Tax Commission enclosed herewith.

You have now exhausted your right of review at the administrative level. Pursuant to section(s) 1090 of the Tax Law, any proceeding in court to review an adverse decision by the State Tax Commission can only be instituted under Article 78 of the Civil Practice Laws and Rules, and must be commenced in the Supreme Court of the State of New York, Albany County, within 4 months from the date of this notice.

Inquiries concerning the computation of tax due or refund allowed in accordance with this decision may be addressed to:

NYS Dept. Taxation and Finance
Law Bureau - Litigation Unit
Albany, New York 12227
Phone # (518) 457-2070

Very truly yours,

STATE TAX COMMISSION

cc: Petitioner's Representative
Seymour Lowenstein
310 Madison Ave.
New York, NY 10017
Taxing Bureau's Representative

STATE OF NEW YORK

STATE TAX COMMISSION

In the Matter of the Petition
of
ACME BRUSH CORPORATION
for Redetermination of a Deficiency or for
Refund of Corporation Franchise Tax under
Articles 9A and 27 of the Tax Law for the
Fiscal Years Ended April 30, 1975, April 30,
1976 and April 30, 1977.

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DECISION

Petitioner, Acme Brush Corporation, 200 Robbins Lane, Jericho, New York 11753, filed a petition for redetermination of a deficiency or for refund of corporation franchise tax under Articles 9A and 27 of the Tax Law for the fiscal years ended April 30, 1975, April 30, 1976 and April 30, 1977 (File No. 33561).

Petitioner has waived a formal hearing and has submitted its case for decision by the State Tax Commission based on the record as it exists. After due consideration of the record, the Commission renders the following decision.

ISSUE

Whether claims for refund of corporation franchise tax, predicated on assertion of a right to retroactively file combined franchise tax reports for prior years, were properly denied.

FINDINGS OF FACT

1. Petitioner, Acme Brush Corporation ("Acme"), filed its New York State corporation franchise tax reports for the fiscal years ended April 30, 1975, April 30, 1976 and April 30, 1977 on an individual basis and paid the taxes due thereon.

2. On July 14, 1978 Acme filed a claim for refund of corporation franchise tax for the fiscal year ended April 30, 1975. This claim was premised on Acme's assertion that it should have filed its report for that year on a combined basis with its parent, The Wooster Brush Company ("Wooster"), and that such filing would have resulted in a lower tax liability for Acme.¹ A combined return as well as information concerning the interrelationship between Acme and Wooster in 1975 was included with this refund claim.

3. The Audit Division denied the above refund claim and the premise it was founded on by a letter dated January 3, 1978.² By a letter dated January 30, 1979, Acme protested this denial and requested a hearing in this matter.

4. On May 3, 1979 Acme filed claims for refund for the fiscal years ended April 30, 1976 and April 30, 1977 based on the same reasoning as the claim previously filed and denied. As with the prior claim, combined returns for the years at issue and information concerning the unitary relationship between Acme and Wooster for these years were included with the refund claims.

5. By a letter dated March 26, 1981 Acme's three claims for refund, totalling \$55,336.53, were denied by the Audit Division.

6. On May 14, 1981 Acme filed a petition for redetermination of the above refund denial, and by a letter dated March 2, 1982 signed by Acme's attorney of record, one Seymour Lowenstein, waived a hearing in this matter and submitted the case for decision by the State Tax Commission based on the record as it exists.

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1. Acme had also stated that if its assertion of a right to file retroactive combined returns was denied, it would then apportion its income in and out of New York State. This issue of apportionment of income, has, however, been withdrawn by Acme.
 2. The letter of denial was erroneously dated January 3, 1978, but obviously was intended to be dated January 3, 1979.

7. Acme was incorporated under the laws of New York State in November, 1930 and began business in the same year. It is engaged in the manufacture and wholesale selling of paint brushes, paint rollers and other paint application tools and accessories.

8. Wooster, which owns one hundred percent (100%) of the outstanding capital stock of Acme, was incorporated under the laws of Ohio in 1909, and is also engaged in the manufacture and wholesale selling of painting implements.

9. By a letter dated April 10, 1978 Acme requested permission to file its corporation franchise tax report for the fiscal year ended April 30, 1978 on a combined basis with Wooster. This was Acme's first request for permission to report on a combined basis. Acme provided the Audit Division with the requisite information for making a decision on this request.

10. Acme was notified, by a letter dated June 7, 1978, that its request for permission to file on a combined basis commencing with the fiscal year ended April 30, 1978 was granted.

CONCLUSIONS OF LAW

A. That section 211.4 of the Tax law in pertinent part provides:

"In the discretion of the tax commission, any taxpayer, which owns or controls either directly or indirectly substantially all the capital stock of one or more other corporations...may be required or permitted to make a report on a combined basis covering any such other corporations...". (emphasis added).

B. That regulations of the State Tax Commission adopted during the period at issue herein in pertinent part provide:

"...A taxpayer must make a written request for permission to file a combined report. The request must be received by the Tax Commission not later than thirty (30) days after the close of its taxable year...". (20 NYCRR 6-2.4(a)), (effective for all taxable years beginning on or after January 1, 1976.)

C. That it had been the policy of the State Tax Commission for many years prior to the promulgation of 20 NYCRR 6-2.4(a) that a request for permission to file on a combined basis would be considered only for returns for current and future years: "... the filing of combined returns is not a statutory right on the part of the taxpayer. The detailed facts necessary to determine whether permission for combined filing should be sought from the Commission are available to the taxpayer at the time annual franchise tax reports are due; and, except under unusual circumstances, the taxpayer has no need of an extended period to determine whether permission should be requested." Matter of Federated Department Stores, Inc., State Tax Commission, August 14, 1981. (Citing Matter of Walker Engraving Corporation, State Tax Commission, June 6, 1971).

D. That petitioner supplied with its refund claims the facts and information for the years at issue necessary for a determination by the Commission concerning permission to file on a combined basis. Petitioner has made no claim that such information was unavailable to it at the time annual franchise tax reports for the years at issue were due, and furthermore has shown no unusual or extraordinary circumstances existing during those years as would warrant an extended period during which to determine whether permission for combined filing should be sought (Matter of Federated Department Stores, Inc., supra. and Matter of Walker Engraving Corporation, supra.). See also Matter of Carter-Wallace, Inc., State Tax Commission, June 25, 1981.

E. That the petition of Acme Brush Corporation is hereby denied and the denial of its claims for refund is sustained.

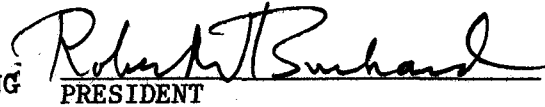
DATED: Albany, New York

AUG 04 1982

STATE TAX COMMISSION

ACTING

PRESIDENT



COMMISSIONER



COMMISSIONER

